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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,757	11/26/2003	Dan Pellerin	60,568-020	7199

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HOWARD & HOWARD ATTORNEYS, P.C.  
THE PINEHURST OFFICE CENTER, SUITE #101  
39400 WOODWARD AVENUE  
BLOOMFIELD HILLS, MI 48304-5151

EXAMINER

AKANBI, ISIAKA O

ART UNIT PAPER NUMBER

2877

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/722,757

Applicant(s)

PELLERIN ET AL.

Examiner

Isiaka O. Akanbi

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Amendment***

The amendment file 15 June 2006 has been entered into this application. Claim 2 is cancelled. Claims 24-28 have been added.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15 and 24 are rejected under 35 U.S.C. 101 the claimed invention is directed to non-statutory subject matter.

Claim 15 recites the limitation "integrating the signals to determine a third configuration of the part and identifying the part being evaluated". Merely integrating the signals to determine a third configuration of the part and identifying the part being evaluated would not appear to be sufficient to constitute a tangible result, since the outcome of the integration step has not been used in a disclosed practical application nor made available in such a manner that's its usefulness in a disclosed practical application can be realized. See OG Notices: 22 November 2005, "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility".

Claim 24 recites the limitation "connecting a comparative program to the controller to determine a three dimensional configuration of the part as the first signal and the second signal are integrated". Merely connecting a comparative program to the controller to determine a three dimensional configuration of the part as the first signal and the second signal are integrated would not appear to be sufficient to constitute a tangible result, since the outcome of the connection step has not been used in a disclosed practical application nor made available in such a manner that's its usefulness in a disclosed practical application can be realized. See OG Notices: 22 November 2005, "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada et al. (4,727,419).

Claims 1, 15 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada. The reference of Yamada teaches of assembly/method for determining the configuration of a part comprising a platform having a longitudinal axis for supporting and moving the part along said longitudinal axis (3), a first detection assembly (8/10) for transmitting a first signal around and the part (7/8) in a direction transverse to said longitudinal axis and for receiving the transmitted first signal passed around the part, a controller (15) for evaluating said first signal received from said first detection assembly thereby determining a first configuration of the part and a second detection assembly (8/10) for transmitting a second signal around and the part (7/8) in the direction transverse to the direction of said first signal and for receiving the transmitted second signal around and the part, said second detection assembly being operably connected to said controller (15) for determining a second configuration of the part whereby said controller integrates said first and second signals for determining a third configuration (i.e. size) of the part thereby identifying the part being evaluated (fig. 1)(col. 3, line 33-col. 4, line 1-8) and a comparative controller (15) adaptable for determining the three dimensional configuration of the part (1) from the first and second configurations, however the reference of Yamada is silent regarding the a comparative program of said controller adaptable for determining the three dimensional configuration of the part from the first and second configurations. It would have been obvious to one having ordinary skill in the art at the time of invention to provide a programmable computer/controller to perform the function require by the apparatus to determining the three dimensional configuration for the purpose of providing a more rapid and accurate information.

As to claims 3-5, 17-19 and 25-26, Yamada discloses everything claimed, as applied to claim 1 and 16, in addition Yamada discloses wherein said first detection assembly determines the height of the part, the outer diameter of the part and the inner diameter of the part by the light receivers 7 and 9 generating/providing a signal corresponding/representing the basic outline/size of the tire (i.e. the outer, the inner and height)(col. 3, line 38-44).

As to claim 6, Yamada discloses everything claimed, as applied to claim 5 above, in addition Yamada discloses wherein said first and second signals include a beam of light (col. 3, line 61-64).

As to claim 7, Yamada discloses everything claimed, as applied to claim 6 above, in addition Yamada discloses wherein said second detection assembly being spaced between said first detection assembly (fig. 1).

As to claim 8, Yamada discloses everything claimed, as applied to claim 7 above, in addition Yamada discloses wherein said second detection (9/10) assembly includes a light emitter (9) for transmitting said second signal (fig. 1)(col. 3, line 61-64).

As to claim 10, Yamada discloses everything claimed, as applied to claim 9 above, in addition Yamada discloses wherein said second detection (9/10) assembly includes a light receiver (9) for receiving said second signal (fig. 1)(col. 3, line 33-col. 4, line 1-8).

As to claims 9 and 11, Yamada discloses everything claimed, as applied to claim 8 and 10 above except for is silent regarding the light emitter being positioned and the light receiver position (i.e. above/below platform), however it would have been obvious to one having ordinary skill in the art at the time of invention to arrange the light emitter and the light receiver in any position (i.e. above/below platform) would have been a matter of rearrangement of parts. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to provide light emitter being positioned above said platform and light receiver being positioned below said platform for the purpose of receiving transmitted light. (see *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (see *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950)).

As to claim 12, Yamada discloses everything claimed, as applied to claim 11 above, in addition Yamada discloses wherein said first detection assembly (7/8) includes a light emitter for transmitting said first signal (fig. 1)(col. 3, line 61-64).

As to claim 13, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein said first detection assembly (7/8) having a light receiver (7) for receiving said first signal (fig. 1).

As to claim 14, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the part is a tire (1)(fig.1)(col. 3, line 34).

As to claim 16, Yamada discloses everything claimed, as applied to claim 15 above, in addition Yamada discloses wherein said controller (15) includes a comparative for determining the three dimensional configuration of the part (1) from the first and second configurations by determining the height of the part, the outer diameter of the part and the inner diameter of the part by the light receivers 7 and 9 generating/providing a signal corresponding/representing the basic outline/size of the tire (i.e. the outer, the inner and height)(col. 3, line 38-44).

As to claim 20, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the step of orienting the first detection assembly (7/8) with respect to the platform is further defined as positioning a light emitter (8) to transmit the first signal onto the part in the direction transverse to the platform (fig1).

As to claim 21, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the step of orienting the first detection assembly (7/8) with respect to the platform is further defined as positioning a light receiver (7) to receive the transmitted first signal around and through the part (fig. 1).

As to claim 22, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the step orienting the second detection assembly (9/10) with respect to the platform is further defined as positioning another light emitter (10) to transmit the second signal onto the part in the direction transverse to the direction of the first signal (fig. 1).

As to claim 23, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the step of orienting the second detection assembly (9/10) with respect to the platform is further defined as positioning another light receiver (9) to receive the transmitted second signal around and through the part (fig. 1).

As to claim 27, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the step of connecting the first detection assembly (7/8) to the platform is further defined as positioning a light emitter (8) to transmit the first signal onto the part in the direction transverse to the platform and positioning a light receiver (7) to receive the transmitted first signal around and through the part (fig. 1).

As to claim 28, Yamada discloses everything claimed, as applied above, in addition Yamada discloses wherein the step connecting the second detection assembly (9/10) with respect to the platform is further defined as positioning another light emitter (10) to transmit the second signal onto the part in the direction transverse to the direction of the first signal and positioning another light receiver (9) to receive the transmitted second signal around and through the part (fig. 1).

#### **Additional Prior Art**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed in the attached form PTO-892 teach of other prior art assembly/method for determining the configuration of a part that may anticipate or obviate the claims of the applicant's invention.

#### ***Response to Arguments***

Applicant's arguments/remarks, see pages 8-10, filed 15 June 2006, with respect to the rejection(s) of claim(s) 1-23 under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. Examiner apologizes for the inconvenience, but upon further consideration, a new ground(s) of rejection is made in view of claim amendment.

#### ***Conclusion***

#### **Fax/Telephone Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isiaka Akanbi whose telephone number is (571) 272-8658. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley Jr. can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isiaka Akanbi

August 20, 2006

  
Gregory J. Tooley, Jr.  
Primary Patent Examiner  
2/AUG/06